

## Using credit or debit cards to pay bankruptcy filing fees

U.S. Bankruptcy Courts permit bankruptcy filing fees to be paid via credit card by the petitioner's lawyer. However, pursuant to Wisconsin Supreme Court Rules (SCR) 20:1.15(e)(4)e., the credit card used to pay such filing fees cannot be connected in any way with the lawyer's trust account. That rule states, in pertinent part, as follows:

**Credit card transactions.** A lawyer shall not authorize transactions by way of credit card to or from a trust account.

Similarly, SCR 20:1.15(e)(4)f. prohibits the use of debit cards. That rule states:

**Debit card transactions.** A lawyer shall not use a debit card to make deposits to or disbursements from a trust account.

These electronic transactions are prohibited under the Wisconsin Supreme Court Rules because, by allowing debit and credit card institutions access to a trust account, a lawyer loses the ability to safeguard funds and properly document the purpose of trust account transactions. However, an attorney may pay the filing fees via a credit card connected with the firm's business account.

In addition, lawyers who represent clients in bankruptcy proceedings should be aware that the funds to pay a client's bankruptcy filing fee should be in the lawyer's trust account and available for disbursement at the time the lawyer files the Compensation Statement of Attorney for the Debtor(s). In other words, a lawyer should not charge the filing fee and file the Compensation Statement in anticipation of receiving the filing fee at some future date. This stems from the Compensation Statement's requirement that the attorney state that the filing fee has been paid.

Upon receipt of the credit card institution's billing statement, the lawyer must disburse the payment of the filing fee from the trust account to the credit card institution and identify the purpose of the payment on the check's memo line. (See, SCR 20:1.15(f)(1)e.1.) Generally, the client and the purpose of the disbursement should be identified on the memo line. For example: "Smith – Ch. 7 Filing Fee". However, if a payment includes numerous filings, the lawyer should identify those filings in a manner that will be verifiable through other records. For example, the memo line might reflect that the payment relates to "25 filings (Ch. 7) and 6 filings (Ch. 13) between 1/7 & 1/28/05". In addition to the attorney's records identifying the 31 bankruptcy clients, the Bankruptcy Court's records could be used to verify that the attorney filed 25 petitions during that timeframe.

While the Bankruptcy Courts provide no specific guidance as to the use of business or personal credit cards to pay filing fees for clients, OLR has serious concerns about trust account record-keeping requirements with respect to such transactions. When a credit card charge is the basis for a payment from the trust account, OLR will consider the credit card billing statement as one of the records that a lawyer must maintain with respect to client funds. Without the billing statement, there is no way to verify what is being paid for when the lawyer issues a check from his or her trust account to a credit card company or its related financial institution.

Since proper record keeping will necessitate maintaining the credit card statements, an attorney who uses a business or personal credit card to pay filing fees will be in the position of having to keep credit card statements containing business or personal information with the attorney's trust account records. Further, since SCR 20:1.15(e) specifies that "(a)ll trust account records shall be deemed to have public aspects as related to the lawyer's fitness to practice," a statement combining trust account expenses with business and/or personal expenses will expose the lawyer's business and/or personal expenses to OLR review in the event of a trust account-related OLR investigation. Consequently, OLR strongly recommends that lawyers segregate trust account "expenses" from business and/or personal expenses by maintaining a separate, special purpose credit card to conduct transactions that will have to be paid from the trust account.

Furthermore, the credit card statement is the primary record whereby an attorney can verify that the payment of each client's filing fee has been made. Only by carefully reviewing the statement and connecting each payment to a particular client can a lawyer assure that the credit card statement contains no errors or omissions, such as a double billing or a lack of payment when the lawyer's records reflect that a payment was made.